IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2468 of 2003

with

FIRST APPEAL No 2469 of 2003

Date of Decision: 23-09-2004

DHIRAJLAL C MISTRY

Versus

KANJIBHAI R HANSELAL

(for full cause title, see next sheet)

Coram:

The Hon'ble Mr.Justice Bhawani Singh, Chief Justice

The Hon'ble Mr.Justice H.K.Rathod, Judge

Whether approved for reporting?

For the Appellant Mrs.Mauna Bhatt, Adv.

For the Respondent-3 Mr.Adil Mirza, Adv.

PER: BHAWANI SINGH, CHIEF JUSTICE (ORAL):-

#. Both these Appeals are being disposed of by this Judgement since they arise out of the same accident and common award. Further, claimants in both the Appeals are same.

#. Accident took place on May 5, 1987, at about 8:00 a.m. on Godhara - Lunavada road when truck bearing

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Whether reporters of Local Papers may be allowed to see the Judgment?

registration No.GTD-4173 dashed against moped, registration No.GAA-1838 near FCI Godowns. At this time, moped was being driven by Dhirajlal Chandulal Mistry (claimant) while his son Manish (19) was pillion rider. Allegation is that accident took place due to the rash and negligent driving of the truck by its driver. It collided with the moped, which for safety sake, had been taken even on the Kutchha road. As a result of this accident, Dhirajlal Chandulal Mistry suffered injuries to ribs and other part of the body while his son died in the hospital, where the father and son had been shifted by their acquaintance Girishbhai.

#. For personal injury, the claim is for Rs.1,05,000/= and for death of Manish, Rs.1,70,000/=. After recording the evidence against three issued framed in the case, the Claims Tribunal holds that accident was caused as alleged, therefore, allowed compensation of Rs.1,21,000/= for death of deceased and Rs.31,000/= for personal injuries. Feeling aggrieved and dissatisfied with this order, the claimant has filed these Appeals.

#. Counsel for the parties heard, record perused. From evidence, it is plainly clear that accident took place due to the rash and negligent driving of truck by its driver. He was rash and negligent, otherwise, accident could have been avoided. Due to this accident, Dhirajlal Chandulal Mistry suffered injuries to the ribs and other part of the body. His son Manish died in this accident. Finding on issue No.1 is therefore confirmed.

#. With regard to compensation, it is submitted that just compensation has not been awarded, therefore, enhancement is called for. Manish was 19 years old at the time of accident. He passed S.S.C. examination. He had taken loan for establishing industry like his father. Obviously, father and son wanted to do business and earn handsomely. In the absence of definite evidence, taking assistance of Schedule-II to Section 163-A, Motor Vehicles Act, 1988, the income is fixed at Rs.15,000/=, making deduction of 1/3rd towards personal expenditure, dependency works out to Rs.10,000/= multiplied by 15, and compensation works out to Rs.1,50,000/= plus Rs.15,000/= (loss of expectancy of life), Rs.2,000/= (transport and medical charges) and Rs.3,000/= (funeral expenses) taking

the total amount of compensation to Rs.1,70,000/=. Therefore, First Appeal No.2469 of 2003 is allowed, compensation is enhanced to Rs.1,70,000/=. Enhanced compensation will carry interest at the rate of 8% per annum from the date of application till award.

#. With regard to compensation for personal injuries claimed by Dhirajlal Chandulal Mistry, going by evidence, he suffered fracture to three ribs, 7, 8, and 9, right side, apart from impact on other part of the body on account of this accident. Obviously, he must have suffered during this time since ribs injuries take long time to cure. He must have spent on transport, attendant, medicine, special diet also. Therefore, compensation awarded for personal injuries seems to be on the lower side. From Rs.31,000/=, it is increased to Rs.50,000/=. First Appeal No.2468 of 2003 is therefore allowed to this extent. Enhanced compensation will carry interest at the rate of 8% per annum from the date of application till award.

The Appeals are disposed of in terms aforesaid leaving the parties to bear their own costs.

(BHAWANI SINGH)
CHIEF JUSTICE

(H.K.RATHOD)
JUDGE

(sunil)